

ADVISORY OPINION NO. 97-17

Issued on July 10, 1997 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

Member of a County Board of Health

OPINION SOUGHT

Is it a violation of the Ethics Act if a member of a County Board of Health represents his private company before the staff of that Board of Health?

FACTS RELIED UPON BY THE COMMISSION

The requester is member of a County Board of Health. He is also the president and majority shareholder of a company that does land surveying, civil engineering and land planning.

Although the Company's projects do not come before the Board of Health for consideration or vote, the projects are reviewed by Board staff on at least two occasions. First, Board staff meet with Company representatives prior to construction to determine whether a construction permit shall be granted. After construction is completed Board staff may meet again to review the work and determine whether any alterations or corrections of work may be necessary. It is likely that the requester, or other employees of his company, would communicate with staff of the Board of Health at these meetings.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(g) provides, in pertinent part, that

(1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations appear, in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed regulation;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

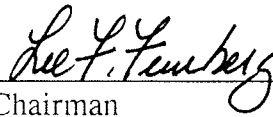
(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person...

ADVISORY OPINION

The Ethics Act, at WV Code 6B-2-5(g), provides that a public official may not appear in a representative capacity before the governmental entity in which he or she serves in regard to certain matters, e.g. administrative sanctions or actions, proposed regulations, the issuance of a license or permit, rate-making proceedings, or the expenditure of public funds.

In Advisory Opinion 95-08-B the Ethics Commission held that a member of a County Planning Commission, who was also a licensed surveyor, could not meet with Planning Commission staff to answer questions regarding his private surveying work on a project. In that opinion the Ethics Commission found that such communications with Planning Commission staff amounted to "representation" of a client before the member's own governmental entity. For the same reasons, the requester would violate WV Code 6B-2-5(g) if he represented his Company by communicating with Board of Health staff regarding his Company's projects.

The requester also inquires whether other employees of his Company may represent the Company at the meetings with Board of Health staff. In this case, the Ethics Commission finds that the requester's substantial stock ownership in the Company makes it impossible to divorce the influence of his identification with the Company as a majority stockholder from such meetings. Therefore the Commission finds that employees of a public official's Company may not represent that Company before the public official's governmental agency when the public official owns a majority ownership interest in that Company.


Chairman